

County Road and Drain Commission Costs for Telecommunications Providers HB5096 and HB5097

Frontier Communications
Communications and Technology Committee
October 23, 2017



Frontier Fast Facts

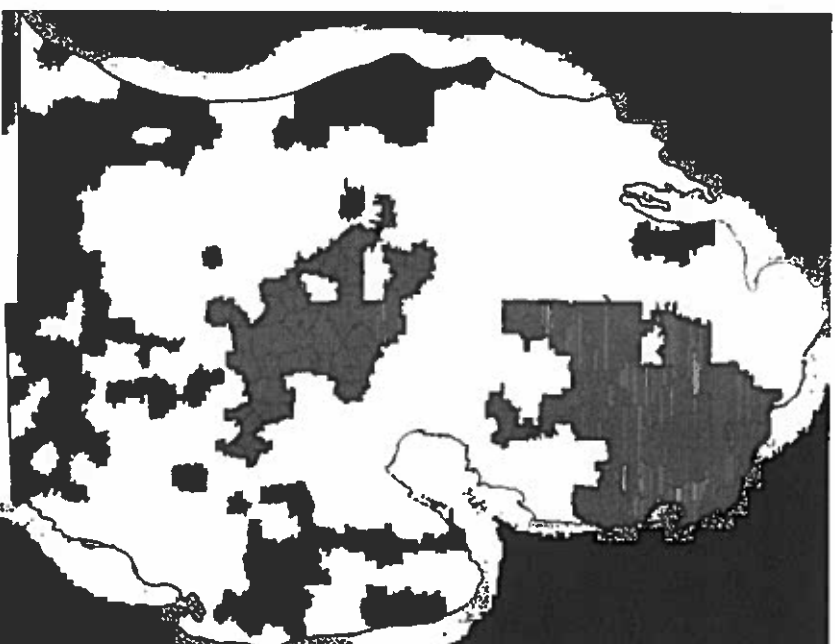
- Operate in 29 states including Indiana, Ohio, Wisconsin, Illinois, Iowa, Minnesota, Pennsylvania
- 100% U.S. based-workforce
- Michigan is the 11th largest of 29 states which Frontier serves
- Approximately 400 Michigan employees. (90 military experienced)
- 15% of our national workforce are Veterans or Active/Reserve Military. Member of The Military Spouse Employment Partnership, The 100,000 Jobs Mission, The Employer Partnership of the Armed Forces, Honor and Remember, and Joining Forces.



Frontier's Service Footprint

42% of the land mass of the LP

- Over 25,000 miles occupied in local ROW
- 350 miles occupied in Federal ROW
- 1,500 miles occupied in State ROW
- 5,200 miles occupied in private or railroad easement



Local “Control” of ROW

- The cost of locating telecommunication infrastructure in the local public right of way
 - Under PA48 of 2002
 - Invoiced fees for the industry are greater than \$20M annually
 - Invoiced fees for Frontier exceed \$4.5M annually
 - Unique Frontier footprint and a history of serving Michigan since the 1920s
 - Increase broadband investment in Michigan

Analysis of Road Commission Fees

- Annual Maintenance Fees
- Permit Fees

Footage based fees

Flat Fees

No fees

- Costs for Bonds/Insurance
- Examples Barry, Genesee, Ingham, Antrim, Ionia, Kalkaska

Analysis of Drain Commission Fees

- Analysis of Road Commission Fees
- Permit Fees

Footage based fees

Flat Fees

No fees

- Costs for Cash Bond – The BIG one
- Costs of Bonds/Insurance
- Examples Lapeer, Calhoun counties

HB 5097

- Addresses the problem of Road Commission fees for managing city, village, and township road right of way
- Does not cure the “double” fee issue with the METRO Act but limits \$\$\$ exposure
- Frontier supports

HB 5096

- Attempts to fix the problem of Drain Commission costs for managing drains in the road right of way
- Frontier supports with amendment to eliminate cash bonds and insert reasonable bond and insurance language from HB 5097 (Page 4 lines 5-27 and Page 5 lines 1-10)

Thank you

Questions and Answers



HOUSE BILL No. 5096

October 12, 2017, Introduced by Reps. Phelps, Hoitenga and Griffin and referred to the Committee on Communications and Technology.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
(MCL 280.1 to 280.630) by adding section 422b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 422B. (1) FOR AUTHORIZATION FOR A BROADBAND PROJECT, A
2 DRAIN COMMISSIONER SHALL NOT CHARGE A BROADBAND SERVICE PROVIDER A
3 FEE THAT EXCEEDS THE LESSER OF THE FOLLOWING:
4 (A) \$100.00 MULTIPLIED BY THE NUMBER OF DRAIN CROSSINGS.
5 (B) \$1,000.00.
6 (2) A FEE COLLECTED UNDER SUBSECTION (1) SHALL BE DEPOSITED
7 WITH THE COUNTY TREASURER. THE COUNTY TREASURER SHALL CREDIT A FEE
8 FOR A BROADBAND PROJECT AFFECTING A SINGLE DRAIN TO THE DRAIN FUND

1 OF THE AFFECTED DRAIN. A FEE FOR A BROADBAND PROJECT AFFECTING 2 OR
2 MORE DRAINS SHALL BE CREDITED TO THE DRAIN FUNDS OF THE AFFECTED
3 DRAINS IN PROPORTION TO THE NUMBER OF CROSSINGS OF EACH DRAIN.

(3) SUBJECT TO THIS SUBSECTION, A DRAIN COMMISSION SHALL NOT REQUIRE A PROVIDER TO HAVE MORE THAN 1 SECURITY BOND OR PERFORMANCE BOND FROM A STATE OR FEDERALLY REGULATED ENTITY TO SECURE THE PERFORMANCE OF THE CONDITIONS OF ALL PERMITS ISSUED THAT AUTHORIZE THE PROVIDER TO CONSTRUCT, OPERATE, MAINTAIN, OR REMOVE A FACILITY OR PERFORM ANY OTHER WORK ANYWHERE WITHIN THE DRAIN OF ANY DRAIN UNDER THE JURISDICTION OF THE DRAIN COMMISSION. THE PROVIDER SHALL DETERMINE WHETHER THE SECURITY BOND OR PERFORMANCE BOND DESCRIBED IN THIS SUBSECTION IS AN INSURANCE BOND OR A CASH BOND. A DRAIN COMMISSION SHALL NOT REQUIRE THE SECURITY BOND OR PERFORMANCE BOND TO BE A CASH BOND. THE AMOUNT OF A SECURITY BOND OR PERFORMANCE BOND DESCRIBED IN THIS SUBSECTION MUST NOT EXCEED \$20,000.00. UPON THE REQUEST OF A PROVIDER, THE DRAIN COMMISSION SHALL RETURN A SECURITY BOND OR PERFORMANCE BOND TO THE PROVIDER WITHIN 60 DAYS AFTER THE PROVIDER COMPLETES CONSTRUCTION WORK IN THE DRAIN. INSTEAD OF PROVIDING A SECURITY BOND OR PERFORMANCE BOND, A PROVIDER MAY PROVIDE SECURITY THAT CONSISTS OF AN IRREVOCABLE LETTER OF CREDIT ISSUED BY A STATE OR FEDERALLY REGULATED FINANCIAL INSTITUTION TO SECURE THE PERFORMANCE OF THE CONDITIONS OF ALL PERMITS ISSUED THAT AUTHORIZE THE PROVIDER TO CONSTRUCT, OPERATE, MAINTAIN, OR REMOVE A FACILITY OR PERFORM ANY OTHER WORK ANYWHERE WITHIN THE DRAIN OR ANY DRAIN UNDER THE JURISDICTION OF THE DRAIN COMMISSION.

(4) A PROVIDER SHALL MAINTAIN GENERAL LIABILITY INSURANCE WITH MINIMUM POLICY LIMITS OF \$1,000,000.00 PER OCCURRENCE FOR PROPERTY DAMAGE AND \$1,000,000.00 PER OCCURRENCE FOR BODILY INJURY THAT APPLY TO ALL CLAIMS, DEMANDS, SUITS, OR CAUSES OF ACTION ARISING IN CONNECTION WITH OR AS A DIRECT RESULT OF THE PROVIDER'S USE AND OCCUPANCY OF A DRAIN UNDER THE JURISDICTION OF A DRAIN COMMISSION. THE DRAIN COMMISSION SHALL NOT REQUIRE THE PROVIDER TO FURNISH A POLICY OF GENERAL LIABILITY INSURANCE NAMING THE DRAIN COMMISSION, ITS OFFICERS, EMPLOYEES, AND OTHERS AS ADDITIONAL INSURED.

4 (3) AS USED IN THIS SECTION:

5 (A) "BROADBAND PROJECT" MEANS THE CONSTRUCTION, INSTALLATION,
6 OR REMOVAL OF BROADBAND FACILITIES OR EQUIPMENT IN THE RIGHT-OF-WAY
7 OF 1 OR MORE DRAINS AS DESCRIBED BY A BROADBAND SERVICE PROVIDER IN
8 A SINGLE APPLICATION FILED WITH THE DRAIN COMMISSIONER.

9 (B) "BROADBAND SERVICE PROVIDER" MEANS A PERSON THAT PROVIDES
10 BROADBAND SERVICE AS THAT TERM IS DEFINED IN SECTION 102 OF THE
11 MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179, MCL 484.2102.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.

HOUSE BILL No. 5098

October 12, 2017, Introduced by Reps. Hoitenga, Griffin and Phelps and referred to the Committee on Communications and Technology.

A bill to amend 1925 PA 368, entitled

"An act to prohibit obstructions and encroachments on public highways, to provide for the removal thereof, to prescribe the conditions under which telegraph, telephone, power, and other public utility companies, cable television companies and municipalities may enter upon, construct and maintain telegraph, telephone, power or cable television lines, pipe lines, wires, cables, poles, conduits, sewers and like structures upon, over, across or under public roads, bridges, streets and waters and to provide penalties for the violation of this act,"

by amending section 13 (MCL 247.183), as amended by 2005 PA 103.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) Except as otherwise provided under subsection
2 (2), telegraph, telephone, power, and other public utility
3 companies, cable television companies, and municipalities may enter
4 upon, construct, and maintain telegraph, telephone, or power lines,
5 ~~pipe lines,~~ PIPELINES, wires, cables, poles, conduits, sewers or

1 similar structures upon, over, across, or under any public road,
2 bridge, street, or public place, including, longitudinally within
3 limited access highway rights-of-way, and across or under any of
4 the waters in this state, with all necessary erections and fixtures
5 for that purpose. A telegraph, telephone, power, and other public
6 utility company, cable television company, and municipality, before
7 any of this work is commenced, shall first obtain the consent of
8 the governing body of the city, village, or township through or
9 along which these lines and poles are to be constructed and
10 maintained.

11 (2) A utility as defined in 23 CFR ~~645.105(m)~~ 645.105 may
12 enter upon, construct, and maintain utility lines and structures,
13 including ~~pipe lines, PIPELINES~~, longitudinally within limited
14 access highway rights-of-way and under any public road, street, or
15 other subsurface that intersects any limited access highway at a
16 different grade, in accordance with standards approved by the state
17 transportation commission and the Michigan public service
18 commission that conform to governing federal laws and regulations
19 and is not required to obtain the consent of the governing body of
20 the city, village, or township as required under subsection (1).
21 The standards ~~shall~~ **MUST** require that the lines and structures be
22 underground and be placed in a manner that will not increase
23 highway maintenance costs for the state transportation department.
24 The standards may provide for the imposition of a reasonable charge
25 for longitudinal use of limited access highway rights-of-way. The
26 imposition of a reasonable charge is a governmental function,
27 offsetting a portion of the capital, maintenance, and permitting

1 expense of the limited access highway, and is not a proprietary
 2 function. The charge ~~shall~~-MUST be calculated to reflect a 1-time
 3 installation permit fee that ~~shall~~-DOES not exceed \$1,000.00 per
 4 mile of longitudinal use of limited access highway rights-of-way
 5 with a minimum fee of \$5,000.00 per permit. If the 1-time
 6 installation permit fee does not cover the reasonable and actual
 7 costs to the department in issuing the permit, the department may
 8 assess the utility for the remaining balance. All revenue received
 9 under this subsection ~~shall~~-MUST be used for capital and
 10 maintenance expenses incurred for limited access highways,
 11 including the cost of issuing the permit.

12 (3) SUBJECT TO SUBSECTION (6), A CITY, VILLAGE, TOWNSHIP, OR
 13 COUNTY OR THE STATE TRANSPORTATION DEPARTMENT SHALL SEND A WRITTEN
 14 NOTIFICATION BY FIRST-CLASS MAIL OR ELECTRONIC MAIL TO AN ENTITY
 15 HOLDING A LICENSE UNDER THE MICHIGAN TELECOMMUNICATIONS ACT, 1991
 16 PA 179, MCL 484.2101 TO 484.2603, OR HOLDING A FRANCHISE UNDER THE
 17 UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT, 2006 PA 480, MCL
 18 484.3301 TO 484.3315, IF THE CITY, VILLAGE, TOWNSHIP, OR COUNTY OR
 19 THE STATE TRANSPORTATION DEPARTMENT REQUESTS OR REQUIRES THE ENTITY
 20 TO TEMPORARILY OR PERMANENTLY RELOCATE ITS FACILITIES FOR ANY
 21 REASON, INCLUDING, BUT NOT LIMITED TO, TO PROTECT THOSE FACILITIES
 22 DUE TO CONSTRUCTION OR OTHER ACTIVITY BY THE CITY, VILLAGE,

"Expansion Clause"

We don't relocate "for any reason" or "other activities". This is a HUGE increase in costs. We should only relocate for "real" public safety or traffic control reasons not for "beautification projects

23 TOWNSHIP, OR COUNTY OR THE STATE TRANSPORTATION DEPARTMENT. EXCEPT
 24 AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CITY, VILLAGE,
 25 TOWNSHIP, OR COUNTY OR THE STATE TRANSPORTATION DEPARTMENT SHALL
 26 SEND THE WRITTEN NOTIFICATION REQUIRED BY THIS SUBSECTION AT LEAST
 27 1 YEAR BEFORE THE RELOCATION IS TO OCCUR. IF A CITY, VILLAGE,

1 TOWNSHIP, OR COUNTY OR THE STATE TRANSPORTATION DEPARTMENT LEARNS
 2 OF A PROJECT OR SECURES FUNDING FOR A PROJECT LESS THAN 1 YEAR
 3 BEFORE THE PLANNED START DATE OF THE PROJECT, THE CITY, VILLAGE,
 4 TOWNSHIP, OR COUNTY OR THE STATE TRANSPORTATION DEPARTMENT SHALL
 5 SEND THE WRITTEN NOTIFICATION REQUIRED BY THIS SUBSECTION WITHIN 30
 6 DAYS OF LEARNING OF THE PROJECT OR SECURING FUNDING FOR THE
 7 PROJECT. WRITTEN NOTIFICATION UNDER THIS SUBSECTION MUST IDENTIFY
 8 THE SPECIFIC RIGHTS-OF-WAY AFFECTED, INCLUDING THE BEGINNING AND
 9 ENDING POINTS, AFFECTED CROSS STREETS AND STRUCTURES, AND THE
 10 PLANNED START DATE OF THE PROJECT.

11 (4) IF A CITY, VILLAGE, TOWNSHIP, OR COUNTY OR THE STATE
 12 TRANSPORTATION DEPARTMENT REQUESTS OR REQUIRES AN ENTITY TO
 13 RELOCATE FACILITIES, THE CITY, VILLAGE, TOWNSHIP, OR COUNTY OR THE
 14 STATE TRANSPORTATION DEPARTMENT MAY REQUIRE THE ENTITY TO OBTAIN A
 15 PERMIT FOR THE RELOCATION OF THE FACILITIES BUT SHALL WAIVE ANY AND
 16 ALL^[SR1]

16 PERMIT FEES OR INSPECTION FEES INCLUDING, BUT NOT LIMITED TO, ANY
 17 PERMIT FEE UNDER SUBSECTION (2).

18 (5) A CITY, VILLAGE, TOWNSHIP, OR COUNTY OR THE STATE
 19 TRANSPORTATION DEPARTMENT SHALL NOT REQUEST OR REQUIRE AN ENTITY TO
 20 CONDUCT ANY STUDY RELATED TO RELOCATING FACILITIES.

21 (6) SUBSECTION (3) DOES NOT APPLY IF A CITY, VILLAGE,
 22 TOWNSHIP, OR COUNTY OR THE STATE TRANSPORTATION DEPARTMENT IS
 23 REQUESTING OR REQUIRING THE RELOCATION BECAUSE OF AN ACT OF GOD OR
 24 EMERGENCY.

"The FEMA Amendment"

If the City, Village, Township, or County applies or receives state or federal aid for the project requiring a relocation, then the City, Village, Township, or County will apply for the cost of relocation and if receives aid will reimbursement the relocater.

25 (7) ~~(3)~~—A person engaged in the collection of traffic data or

26 the provision of travel-related information or assistance may enter
 27 upon, construct, and maintain electronic devices and related

"Bad engineering" clause

This language comes from Indiana statute and is meant to protect against short term repeat moves of the same facilities due to "bad engineering".

IC 8-23-26-7

Reimbursement of costs of unnecessary relocation; conditions

Sec. 7. The department shall reimburse a utility for the costs of an unnecessary relocation of facilities if, after the completion of the relocation of the facilities:

- (1) within two (2) years after the completion the department has not let a contract for the highway or bridge construction or improvement; or
- (2) the department alters the department's plan of construction for the highway or bridge construction or improvement in a manner that would cause the utility to relocate the utility's facilities for the same highway or bridge construction or improvement project.

1 structures within limited access and other highway rights-of-way in
 2 accordance with standards approved by the state transportation
 3 commission that conform to governing federal laws and regulations.
 4 The standards ~~shall~~**MUST** require that the devices and structures be
 5 placed in a manner that will not impede traffic and will not
 6 increase maintenance costs for the state transportation department.
 7 The state transportation department may enter into agreements to
 8 authorize the use of property acquired for or designated as a
 9 highway or acquired for or designated for ancillary purposes for
 10 the installation, operation, and maintenance of commercial or
 11 noncommercial electronic devices and related structures for the
 12 collection of traffic data or to assist in providing travel-related
 13 information or assistance to motorists who subscribe to travel-
 14 related services, the public, or the department. Any revenue
 15 generated by the agreements ~~shall~~**MUST** be deposited in the state
 16 trunk line fund **ESTABLISHED UNDER SECTION 11 OF 1951 PA 51, MCL**

17 247.661. The department may accept facilities or in-kind services
 18 to be used for public purposes in lieu of, or in addition to,
 19 monetary compensation.

20 (8) AS USED IN THIS SECTION:

21 (A) "ACT OF GOD" MEANS AN UNANTICIPATED GRAVE NATURAL DISASTER
 22 OR OTHER NATURAL PHENOMENON OF AN EXCEPTIONAL, INEVITABLE, AND
 23 IRRESISTIBLE CHARACTER, THE EFFECTS OF WHICH COULD NOT HAVE BEEN
 24 PREVENTED OR AVOIDED BY THE EXERCISE OF DUE CARE OR FORESIGHT.

25 (B) "EMERGENCY" INCLUDES, BUT IS NOT LIMITED TO, FLOODING NOT
 26 CAUSED BY AN ACT OF GOD, A WATER MAIN BREAK, A SEWER LINE FAILURE,
 27 A NATURAL GAS LEAK, OR AN ACT OF TERRORISM.

Cost Reimbursement for Extraordinary Costs from Indiana^[SR2]

IC 8-23-1-22.5 "Extraordinary cost" defined

Sec. 22.5. "Extraordinary cost" means the cost to a utility to relocate existing facilities that is either:

- (1) more than ten percent (10%) of the total operating revenue received by the utility during the utility's most recent full fiscal year; or
- (2) more than fifty percent (50%) of the total estimated cost of a proposed highway or bridge construction or improvement project.

IC 8-23-26-8

Reimbursements for unnecessary relocation; limits; further conditions

Sec. 8. (a) The reimbursement paid under section 7 of this chapter is limited to the cost of relocation (as defined in IC 8-1-9-2) to the utility.

(b) The department may reimburse a utility for an unnecessary relocation under section 7 only if the relocation of the utility's facilities was specifically requested by the department.

IC 8-23-26-5

Reimbursement of extraordinary costs of relocation

Sec. 5. The department may negotiate an agreement with a utility to reimburse the utility for extraordinary costs of facilities relocation caused by a highway or bridge construction or improvement project or a combination of highway or bridge construction or improvement projects.

1 (C) "STUDY" MEANS A STUDY OR SURVEY, INCLUDING, BUT NOT
2 LIMITED TO, DRAINAGE, SOIL, OR CENTER LINE STUDIES.

3 Enacting section 1. This amendatory act takes effect 180 days
4 after the date it is enacted into law.

Facility Relocation Costs for Telecommunications Providers

HB5098

Frontier Communications

Communications and Technology Committee

October 23, 2017



Relocation of Telecommunications

Infrastructure - Costs

- \$2.5M to \$4.5M annually
- Rebuild a new factory
- Produce same product at new factory
- Destroy a productive factory
- Opportunity cost of limited capital and labor
- Service interruptions
- Contractor Delay Costs/Project Delay
- 25,000+ miles of exposure

Relocation of Telecommunications Infrastructure - Costs

- Goal is to minimize everyone's cost
- The real key is avoidance of facility relocation through best practices transportation project planning and accommodative engineering design
- Today there is no financial or procedural incentives for changes in transportation infrastructure to consider impacts to private investment

HB 5098

- Attempts to address the procedural issues of notice of facility relocation to providers from road authorities
- Does not address costs of road authorities or providers
- Significantly increases costs of providers

HB 5098

- Page 3; lines 20 – 21 expands relocation obligations for providers “for any reason”.
- Facility relocation is only required for changes in the transportation systems.
- “Beautification”; because “I said so”; are not legitimate government interests.
- Frontier estimates costs will increase by 50% to 100% over current levels

HB 5098

- Page 5; lines 23 – 24 contemplates “an act of god or emergency” and suspends notices requirements
- Facility Relocation is done post event and maybe required only under the worst circumstances
- Restoration of facilities is done ASAP.
- If the authority receives emergency funding, they should request funding to assist post-restoral relocation costs of providers.

HB 5098

- New thoughts
- “Bad Engineering” clause
 - Moving early with no authority construction
 - Change plans; relocate again
- “Extraordinary” costs
 - Protect universal service
 - Protect a going concern

Thank you

Questions and Answers

